BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

MARY A. MORELAND	)	
Claimant	)	
VS.	)	
	)	Docket No. 253,860
FALLEY'S, INC.	)	
Respondent	)	
AND	)	
	)	
LIBERTY MUTUAL INSURANCE COMPANY	)	
Insurance Carrier	)	

ORDER

Claimant appeals from the October 4, 2000 preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict.

ISSUES

Claimant alleges she suffered a series of injuries to her bilateral upper extremities while working for respondent through November 10, 1999 when she was forced to leave work due to her injuries. She claims she suffered a reinjury or aggravation of the injuries she sustained previously while working for another employer, Genmar Manufacturing. The ALJ denied claimant preliminary benefits finding that the alleged aggravation was at most temporary and did not constitute a new accident. Respondent contends that claimant's current condition and need for medical treatment is not the result of her brief employment with respondent but instead is the direct result of her preexisting condition. Therefore, the issue is whether claimant's current condition and need for medical treatment is due to an accidental injury that arose out of and in the course of claimant's employment with respondent. This issue is considered jurisdictional and is subject to review by the Board on an appeal from a preliminary hearing order.[1]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Workers Compensation Act places the burden of proof upon claimant to establish his or her right to an award of compensation and to prove the conditions on which

[1] K.S.A. 1999 Supp. 44-534a(a)(2) and K.S.A. 1999 Supp. 44-551(b)(1).

that right depends.[2] "'Burden of proof' means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record."[3] The Act is to be liberally construed to bring employers and employees within the provisions of the Act but those provisions are to be applied impartially to both.[4]

Claimant argues her preexisting condition significantly worsened as a result of her employment with respondent. But the greater weight of the credible medical evidence is that claimant did not suffer a new injury while employed by respondent. Claimant's testimony concerning ongoing symptoms since leaving her employment at Genmar which worsened both during her subsequent periods of employment and during her periods of unemployment, in the Board's view, does not support claimant's theory of causation. Instead, this evidence supports the position that claimant's current symptoms are a natural progression of her preexisting condition. Based upon the record presented to date, the Appeals Board finds that claimant's work for respondent caused a temporary worsening of her condition, but it is more probably true than not true that her work activities with respondent did not constitute a new accidental injury.[5]

Although not an issue for this appeal, it appears that claimant's current condition may be compensable as a direct and natural consequence of her original injury while employed at Genmar. Consideration should be given to consolidating these claims. The ALJ noted that claimant also left her subsequent jobs at Cracker Barrel and the law office of Walter P. Robertson due to hand and arm pain. Claimant described these flare ups as temporary aggravations and said both of these jobs were lighter duty than the work she performed for respondent and considerably lighter than the work she performed at Genmar, which is where her bilateral upper extremity problems allegedly began. The Board does not find that claimant suffered any intervening accidents during these subsequent employments.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict on October 4, 2000, should be, and is hereby, affirmed.

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[2] K.S.A. 1999 Supp. 44-501(a); see also Chandler v. Central Oil Corp., 253 Kan. 50, 853 P.2d 649 (1993) and Box v. Cessna Aircraft Co., 236 Kan. 237, 689 P.2d 871 (1984).

[3] K.S.A. 1999 Supp. 44-508(g). See also *In re* Estate of Robinson, 236 Kan. 431, 690 P.2d 1383 (1984).

[4] K.S.A. 1999 Supp. 44-501(g).

[5] Nance v. Harvey County, 263 Kan. 542, 952 P.2d 411 (1997); Stockman v. Goodyear Tire & Rubber Co, 211 Kan. 260, 505 P.2d 697 (1973). See also Bradford v. Boeing Military Airplanes, 22 Kan. App. 2d 868, 924 P.2d 1263, *rev. denied* 261 Kan. 1082 (1996).

IT IS SO ORDERED.

Dated this ____ day of December 2000.

BOARD MEMBER

c: Jeff K. Cooper, Topeka, KS
John F. Carpinelli, Topeka, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director